

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KODY BRACE,

Plaintiff,

v.

JAMES DZURENDA, *et al.*,

Defendants.

Case No. 2:24-cv-02205-RFB-MDC

**ORDER**

**I. INTRODUCTION**

Plaintiff Kody Brace's documents initiating this civil action contained an incomplete application to proceed *in forma pauperis* and a motion for the appointment of counsel, but Brace did not submit a complaint. (ECF Nos. 1, 1-1). On December 2, 2024, the Court ordered Brace to file a signed complaint and either pay the full \$405 filing fee or file a complete application to proceed *in forma pauperis* by January 31, 2025. (ECF No. 3). That deadline expired without any compliance or other response by Brace.

**II. DISCUSSION**

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In

1 determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the  
2 public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;  
3 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on  
4 their merits; and (5) the availability of less drastic alternatives. See In re Phenylpropanolamine  
5 Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation and the  
7 Court's interest in managing its docket, weigh in favor of dismissal of Brace's claims. The third  
8 factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a presumption of  
9 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court  
10 or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth  
11 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by  
12 the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can be used  
14 to correct the party's failure that brought about the Court's need to consider dismissal. See Yourish  
15 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic  
16 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord  
17 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts “need not exhaust every  
18 sanction short of dismissal before finally dismissing a case, but must explore possible and  
19 meaningful alternatives.” Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986). Because  
20 this Court cannot operate without collecting reasonable fees and this action cannot proceed without  
21 a signed complaint and Brace's compliance with the Court's Orders, the only alternative is to enter  
22 a second order setting another deadline. But repeating an ignored order often only delays the  
23 inevitable and further squanders the Court's finite resources. The circumstances here do not  
24 indicate that this case will be an exception. Setting another deadline is not a meaningful alternative  
25 given these circumstances. So, the fifth factor favors dismissal.

### 26 III. CONCLUSION

27 Having thoroughly considered these dismissal factors, the Court finds that they weigh in  
28 favor of dismissal. **IT IS THEREFORE ORDERED** that this action is dismissed without

1 prejudice based on Kody Brace's failure to file a signed complaint and address the matter of the  
2 filing fee in compliance with this Court's December 2, 2024 Order. The Clerk of Court is kindly  
3 directed to enter judgment accordingly and close this case.

4 **IT IS FURTHER ORDERED** that Brace's incomplete Application to proceed *in forma*  
5 *pauperis* (ECF No. 1) and Motion for the Appointment of Counsel (ECF No. 1-1) are denied as  
6 moot.

7 **IT IS FURTHER ORDERED** that the Plaintiff Kody Brace may move to reopen this case  
8 and vacate the judgment by filing a motion for reconsideration of this Order. In the motion, Brace  
9 would need to explain the circumstances which led to him not being able to file a signed complaint  
10 and address the matter of the filing fee as directed by the Court. If the Court finds there is good  
11 cause or a reasonable explanation for the failure, the Court will reopen the case and vacate the  
12 judgment.

13 **DATED:** this 18th day of February, 2025

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16 **RICHARD F. BOULWARE, II**  
17 **UNITED STATES DISTRICT JUDGE**  
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